

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RADIAN ASSET ASSURANCE , INC.,

Plaintiffs,

vs.

No. CIV 09-0885 JB/DJS

COLLEGE OF THE CHRISTIAN BROTHERS OF
NEW MEXICO, known as THE COLLEGE OF
SANTA FE; CHRISTIAN BROTHERS OF THE
COLLEGE OF SANTA FE COMMUNITY d/b/a
THE COLLEGE OF SANTA FE, a New Mexico
corporation; DR. MARK LOMBARDI, an individual,
JERRY BRISSON, an individual, and SHARON
BAIN, an individual,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on: (i) the Defendants' Motion for Protective Order and for Temporary Stay of Discovery Pending the Substitution of New Counsel, filed June 14, 2010 (Doc. 66); and (ii) the Defendants' Joint Motion to Vacate Scheduling Order, Extend All Deadlines or, in the Alternative, to Conduct a Rule 16 Scheduling Conference, filed June 21, 2010 (Doc. 77). The Court held a hearing on July 13, 2010. The primary issues are: (i) whether the Court should enter a protective order extending the deadline for Defendants College of the Christian Brothers of New Mexico's, Sharon Bain's, Jerry Brisson's, and Mark Lombardi's responses to three sets of requests for admission that Plaintiff Radian Asset Assurance Inc. has propounded until thirty days after the substitution of new counsel for the Defendants; (ii) whether the Court should enter an order temporarily staying discovery until the substitution of new counsel has been effectuated; and (iii) whether the Court should vacate the February 26, 2010 Scheduling Order and enter a new

Scheduling Order shifting all deadlines forward six months.

At the July 13, 2010 hearing, the Court orally ruled on the parties' motions and addressed several scheduling issues, including setting several new discovery deadlines. The Court now enters this written order memorializing those rulings. For the reasons stated on the record, and for further reasons consistent with those already stated, the Court orders as follows. First, the Court denies as moot the Defendants' request for protective order insofar as it asks that the answers to Radian Asset's requests for admission be due thirty days from the appointment of replacement counsel. The Defendants' new counsel entered their appearances throughout the latter part of June 2010. See Notice of Appearance, filed June 17, 2010 (Doc. 74)(Clifford Atkinson of Atkinson, Thal & Baker, P.C. entering appearance on behalf of the Christian Brothers of New Mexico d/b/a the College of Santa Fe ("CSF")); Notice of Appearance, filed June 17, 2010 (Doc. 75)(Justin Rodriguez of Atkinson, Thal & Baker, P.C. entering appearance on behalf of CSF); Entry of Appearance, filed June 17, 2010 (Doc. 76)(Michael Brennan of Brennan & Sullivan, P.A. entering appearance on behalf of Defendant Mark Lombardi); Entry of Appearance, filed June 22, 2010 (Doc. 78)(Joe McClaugherty and Tamara Safarik of McClaugherty & Silver, P.C. entering appearance on behalf of Defendant Jerry Bisson); Entry of Appearance, filed June 23, 2010 (Doc. 79)(Keleher & McLeod, P.A. entering appearance on behalf of Defendant Sharon Bain). The Court orders that the Defendants' responses to the Radian Asset's requests for admissions are due thirty days from the date of the July 13, 2010 hearing, i.e., August 12, 2010. Second, the Court denies the Defendants' request for a stay, but will extend all deadlines by ninety days. See Recording of Hearing at 12:05:00 (Court)(Radian Asset not opposing a 90-day extension).

Third, the Defendants will respond to Radian Asset's request for production of documents in their possession -- not including those documents in third-party Laureate Education, Inc.'s

possession -- within thirty days from the date of the July 13, 2010 hearing. Once the Defendants have responded -- either with documents or with objections -- Radian Asset will have ten days to file any motions to compel requesting the documents in the Defendants' possession.¹ The Defendants will then have seven days to file a response to the motion or motions, and the Court will hold a hearing on the motion or motions on August 31, 2010, at 10:00 a.m. Radian Asset agrees to waive its right to a written reply.

Fourth, the parties will have ten days from the July 13, 2010 hearing to resolve and to agree on the issue regarding how to handle discovery of the documents in Laureate's possession. If the parties can agree on a procedure, they can submit a proposed order signed by all relevant parties. Because there is a possibility that the parties will not be able to resolve all discovery issues related to the Defendants' documents in Laureate's possession, the Court schedules a hearing on July 28, 2010 at 4:00 p.m. to resolve how to deal with those documents. If the parties submit an agreed order, the Court will vacate the July 28, 2010 hearing. The parties are free and encouraged to call the Court for a conference call during these days to get the Court's position and views on the discovery issues.

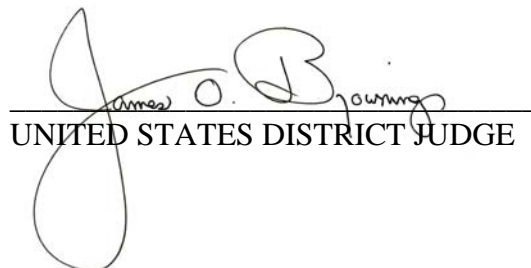
Fifth, the Defendants must disclose any applicable insurance policies no later than August 7, 2010. Finally, the parties shall schedule the recommencement of the deposition of Paul Cassidy on, or as soon as possible after, August 2, 2010. The Defendants will set up the deposition to take place in Albuquerque, New Mexico, but Radian Asset will be required to issue the subpoena to have Cassidy come in for the completion of the Defendants' questioning. The deposition of

¹ Because these motions to compel will be on a truncated briefing schedule, Radian Asset should feel free to file its motion to compel in the form of a letter to the Court, rather than a formal motion. Similarly, the Defendants may respond to the motion by letter brief.

Defendant Mark Lombardi is set for September 7, 2010, and will take place in Missouri, where Lombardi is currently located. The deposition of Defendant Jerry Brisson will also take place in Missouri, and is tentatively scheduled for September 8, 2010.

The deadline for discovery is now extended to December 17, 2010. The motions deadline is extended to March 22, 2011. A motion hearing will take place on May 3, 2011. The pretrial conference will take place on June 1, 2011, at 9:00 a.m. The trial is set on the Court's trailing docket of June 13, 2011, at 9:00 a.m. Additionally, a motion hearing is set for the parties' discovery/document disclosure issues on August 31, 2010, at 10:00 a.m. Again, Radian Asset will have 10 days after the Defendants respond to its request for production -- whether it responds with documents or objections -- to file any motion or motions to compel. This schedule should give the Defendants a sufficient opportunity to respond before the August 31, 2010 hearing.

IT IS ORDERED that the Defendants' Motion for Protective Order and for Temporary Stay of Discovery Pending the Substitution of New Counsel and the Defendants' Joint Motion to Vacate Scheduling Order, Extend All Deadlines or, in the Alternative, to Conduct a Rule 16 Scheduling Conference are granted in part and denied in part as set forth in this order. The Defendants request for a protective order extending the deadline for the Defendants' responses to three sets of requests for admission that the Plaintiff has propounded until thirty days after the substitution of new counsel for the Defendant is denied as moot. The request for entry of an order temporarily staying discovery until the substitution of new counsel has been effectuated is denied.


UNITED STATES DISTRICT JUDGE

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